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INDIANA UTILITY REGULATORY COMMISSION
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April 12, 1999

Hon. Magalie Roman Salas
Office of the Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Room TW-A325
Washington, DC 20554

Re: CC Docket No. 96-98 (In re: Implementation of the Local Competition Provisions in the Telecommunications Act of 1996) and CC Docket 99-68 (In re: Inter-Carrier Compensation for ISP-Bound Traffic)

Dear Secretary Salas:

The Indiana Utility Regulatory Commission files the enclosed comments in response to the February 25, 1999, Declaratory Ruling and Notice of Proposed Rulemaking in CC Docket No. 96-98 (In re: Implementation of the Local Competition Provisions in the Telecommunications Act of 1996) and CC Docket 99-68 (In re: Inter-Carrier Compensation for ISP-Bound Traffic).

Included in this filing are an original and five copies. Please stamp one copy "received" and return it to the Indiana Utility Regulatory Commission in the self-addressed, stamped envelope that is enclosed.

The contact information for the IURC is as follows:

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Please contact Maureen Flood, principal telecommunications analyst, at 317/232-2785 if there are any problems with this filing.

Cordially,

Sandy Ibaugh

Sandy Ibaugh
Director of Telecommunications

Enclosures

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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of the Local Competition Provisions in the Telecommunications Act of 1996	)	CC Docket No. 96-98
	)	
Inter-Carrier Compensation for ISP-Bound Traffic	)	CC Docket No. 99-68

Comments of the Indiana Utility Regulatory Commission (IURC)

Summary

In these comments, the Indiana Utility Regulatory Commission addresses two aspects of the Federal Communications Commission's (FCC) February 25, 1999 Declaratory Ruling and Notice of Proposed Rulemaking in CC Docket No. 96-98 (In re: Implementation of the Local Competition Provisions in the Telecommunications Act of 1996) and CC Docket 99-68 (In re: Inter-Carrier Compensation for ISP-Bound Traffic) (hereafter "NPRM").

First, the IURC discusses the FCC's finding that traffic to Internet Service Providers (ISPs) is predominantly interstate in nature. The IURC is troubled by the FCC's delegation of cost recovery for an interstate service to the intrastate jurisdiction, as described in paragraph 36 of the NRPM. It is the position of the IURC that a state commission should not be, and perhaps cannot legally be, held responsible for recovering the cost of an interstate service through intrastate rates. The IURC asks other parties or the FCC for comment on several actions that a state commission may undertake in the absence of revisions to existing separations rules to fix this incorrect, and perhaps illegal, division of jurisdictional authority and cost recovery responsibility. In addition, the IURC discusses how the designation of Internet traffic as interstate could limit the availability of Internet access to rural customers, since rural telephone companies will no longer be required to carry ISP-bound traffic across EAS lines. Without EAS access to an ISP, many rural customers will be required to pay toll charges for Internet use.

Second, the IURC provides comment on practical matters the FCC is considering in the wake of this decision, notably the prospective effect of section 252(i) adoptions and pricing guidelines for reciprocal compensation for ISP-bound traffic. The IURC agrees with the FCC that reciprocal compensation for such traffic should continue to be determined through voluntarily negotiated and arbitrated interconnection agreements between carriers, pursuant to sections 251 and 252 of the Telecommunications Act of 1996 (TA-96); the IURC does not believe that specific, federally imposed guidelines are

necessary at this time. The IURC also recognizes that section 252(i) of TA-96, in conjunction with Most Favored Nation clauses contained in current interconnection agreements, could limit the ability of incumbent local exchange carriers to renegotiate reciprocal compensation provisions for ISP-bound traffic in the wake of the FCC's recent order. If the FCC believes that a national standard for inter-carrier cost recovery is necessary, then the FCC should encourage states to require local exchange carriers to adopt bill and keep arrangements for all traffic. Rather than requiring bill and keep immediately, however, the FCC should ask the states to implement a gradual phase-out of reciprocal compensation for Internet traffic over a specified time frame (e.g., three years), and apply bill and keep once this transition is complete.

1. Introduction

These comments are filed in response to the Declaratory Ruling and Notice of Proposed Rulemaking (NPRM) in the above-captioned proceeding, released on February 26, 1999. The Federal Communications Commission (FCC) therein ruled that traffic bound for an Internet Service Provider (ISP) is jurisdictionally mixed, and appears to be largely interstate.[1] The FCC made this finding in response to requests by competitive local exchange carriers (CLECs) and incumbent local exchange carriers (ILECs) for clarification of the jurisdictional nature of Internet traffic in order to settle disputes regarding the payment of reciprocal compensation pursuant to section 251(b)(5) of the

[1] NPRM, paragraphs 1 and 18.

Telecommunications Act of 1996 (TA-96 or the Act).

The FCC ruled that this finding is not to be used to determine whether reciprocal compensation is due for ISP-bound traffic.[2] The FCC noted that many carriers might have entered into voluntarily negotiated interconnection agreements which require reciprocal compensation for such traffic, or a state commission, using its authority to arbitrate interconnection disputes under section 252 of TA-96, may have required such compensation. Furthermore, the FCC affirmed that ISP's will retain their exemption from the payment of certain interstate access charges pursuant to their status as Enhanced Service Providers (ESPs).[3]

The FCC also asked for comment on several unresolved issues that have arisen from its determination that Internet traffic is interstate in nature, including:

- if future inter-carrier compensation for ISP-bound traffic should be determined through federally established rates or voluntary and arbitrated interconnection agreements adopted pursuant to sections 251 and 252 of TA-96[4];

- how section 252(i) and Most Favored Nation clauses in existing interconnection agreements will affect the ability of local exchange carriers to renegotiate their interconnection agreements[5]; and

- whether this finding will have implications on how the costs and revenues for ISP-bound traffic are allocated between the federal and state jurisdictions.[6]

2. The FCC's Declaratory Ruling Violates Fundamental Separations Principles Because it Divides Jurisdictional Authority and Cost Recovery Responsibility between the Federal and State Jurisdictions

The FCC has determined that traffic bound for an ISP is interstate traffic based on an analysis of the end points of the communication and a determination that a substantial portion of such traffic crosses a state boundary before it terminates.

According to the FCC, traffic travels to an ISP in the following manner:

> In general, an originating LEC end user's call to an ISP served by another LEC is carried (1) by the originating LEC from the end user to the point of interconnection (POI) with the LEC serving the ISP; (2) by the LEC serving the ISP from the LEC-LEC POI to the ISP's local server; and (3) from the ISP's local server to a computer that the originating LEC end user desires

[2] NPRM, paragraph 1.
[3] NPRM, paragraph 20.
[4] NPRM, paragraphs 31-32.
[5] NPRM, paragraph 35.
[6] NPRM, paragraph 36.

to reach via the Internet.[7]

Several CLECs have argued that this type of communication should be separated into two components for jurisdictional purposes: 1) an intrastate call carried by a local exchange carrier from the end user to an ISP; and 2) an interstate information service provided by the ISP which terminates the call on another computer in a distant location. The FCC disagrees with this analysis on the grounds that it is not based on the end points of the communication and thus artificially divides a single call into two discrete parts.[8] Indeed, the FCC seems to assert its jurisdiction over Internet traffic based on the belief that a substantial amount of Internet traffic which originates with an end user in one state terminates on a computer located in another state[9], thus defining such traffic as interstate communication.[10]

The IURC is concerned by several possible impacts of the FCC's analysis of jurisdiction. Even though the FCC has asserted its jurisdiction over ISP-bound traffic based on an end-to-end analysis of the communication, Internet service itself is purchased by end users as two components, as described by the FCC in the NPRM: 1) an access line, provided by a local exchange carrier, which allows the end user to call an ISP using a seven-digit number; and 2) protocol conversion, transmission, routing etc., provided by the ISP, which enables the customer to access Internet content and services.[11] The access lines purchased by end users are local access lines that are provided through an intrastate tariff. Furthermore, because ISP's are recognized as Enhanced Service Providers (ESPs) and thus are exempt from paying certain interstate access charges, they are able to purchase their access lines through intrastate business tariffs rather than interstate access tariffs. Finally, once a transmission reaches an ISP server, it leaves the public switched network and is routed to its ultimate destination through the Internet backbone, which is a private, packet-switched network over which the FCC has no jurisdiction. In summary, it appears to the IURC that in its analysis of jurisdiction, the FCC has combined a service that is regulated on an intrastate basis and provided over the public switched network with an unregulated service that is provided across a private network to create a new, interstate service.

In the NPRM, the FCC also states that it does not want its decision regarding the jurisdiction of ISP-bound traffic to create a mismatch between how costs and revenues for such traffic are allocated to the state and federal jurisdictions:

> This Commission is mindful of concerns that our jurisdictional analysis may result in allocation to different jurisdictions of the costs and revenues associated with ISP-bound traffic, (footnote omitted) and we wish to make

[7] NPRM, paragraph 7.
[8] NPRM, paragraph 13.
[9] NPRM, paragraph 18.
[10] The IURC assumes the FCC has asserted its jurisdiction over all Internet traffic due to its invocation of the BellSouth MemoryCall decision (*BellSouth MemoryCall,* 7 FCC Rcd), which found that even though the voicemail service in question received both intrastate and interstate calls, and was tariffed on an intrastate basis, the service was subject to federal jurisdiction. See NPRM, paragraph 12.
[11] NPRM, paragraph 4.

> clear that we have no intention of permitting such a mismatch to occur. With respect to current arrangements, we note that this order does not alter the long-standing determination that ESPs (including ISPs) can procure their connections to LEC end offices under intrastate end-user tariffs, and *thus for those LECs subject to jurisdictional separations both the costs and the revenues associated with such connections will continue to be accounted for as intrastate.*[12] (emphasis added)

The FCC is correct in its position that the costs and revenues associated with Internet traffic are not assigned to different jurisdictions, because as stated in the NPRM, both costs and revenues are assigned to the intrastate jurisdiction. However, *the FCC has ruled that this traffic is interstate traffic, and as such, the costs and revenues associated with it should be assigned to the interstate jurisdiction.*[13] The fact that the FCC has asserted its jurisdiction over Internet traffic yet left states the responsibility for recovering the cost of the facilities used to carry this traffic through the assignment of LEC costs and revenues to the intrastate jurisdiction constitutes a separations mismatch, though not the type of mismatch the FCC seeks to avoid in NPRM. If the FCC exercises jurisdiction over Internet traffic, the IURC believes that the FCC should be responsible for both setting rates and recovering costs for such traffic, rather than relying on the states to set prices (and recover the costs) for local access lines sold to both end users and ISPs.[14] For example, the FCC, through the Separations Joint Board process, could section off an additional portion of the local loop and switching capacity used to carry Internet traffic; the FCC could then develop an interstate tariff that recovers the costs for these facilities through interstate rates. Furthermore, if it is too difficult to determine the relative percentages of interstate and intrastate Internet traffic, as discussed by the FCC in the NPRM[15], then the costs associated with Internet traffic should be wholly assigned to the interstate jurisdiction. The IURC must emphasize its belief that if the FCC wants jurisdiction over Internet traffic, it should assume responsibility for setting rates, recovering costs, and establishing a tariff for the services that enable such traffic.

Indeed, assigning the revenues and the costs for an interstate service such as the Internet to the intrastate jurisdiction creates specific cost allocation problems. As discussed above, both end users and ISPs may purchase residential or business access lines, whichever are applicable, out of an intrastate tariff. These access lines, in turn, provide end users access to the ISP and the ISP access to end users. The IURC believes that the intrastate jurisdiction should not be responsible for recovering the costs associated with an interstate service. The IURC knows of no other interstate service for which a state commission is assigned responsibility for recovering the costs associated with such service through intrastate rate making. The IURC reiterates that if

[12] NPRM, paragraph 36.

[13] The IURC also is discouraged by the FCC's recent denial of the National Association of Regulatory Utility Commissioner's Petition for Clarification and/or Reconsideration of these very same issues as they relate the FCC's recent order in CC Docket No. 98-79 (In the Matter of GTE Telephone Operating Cos. GTOC Tariff No. 1, GTOC Transmittal No. 1148, October 30, 1998).

[14] NPRM, paragraph 20.

[15] NPRM, paragraph 36.

Internet traffic is an interstate service that uses the local loop, then an additional portion of the loop cost should be recovered through an interstate rate, not basic local service (BLS) rates. Assigning the costs and revenues associated with Internet traffic solely to the intrastate jurisdiction could force the states, and by extension BLS customers, to recover more than their fair share of common plant costs in possible violation of section 254(k) of TA-96. Bluntly stated, *if Internet traffic is interstate traffic, then intrastate BLS rates, which currently recover the cost of Internet access, might be too high.* The FCC, through the Separations Joint Board process, could assign 50 percent of these costs to the intrastate jurisdiction instead of the current 75 percent allocation to reflect the increased use of facilities such as the local loop to carry interstate traffic, as well as assign Internet minutes to the interstate jurisdiction. In the absence of such revision, state commissions such as the IURC could require ILECs to assign traffic-sensitive costs, such as minutes of use generated by Internet traffic, to the interstate jurisdiction.

3. The Designation of ISP-Bound Traffic as Interstate Could Limit the Availability of Internet Access in Rural Communities

The FCC's designation of Internet traffic as interstate also could inadvertently limit the availability of Internet access in rural areas. In Indiana, many end users subscribe to an ISP that is located in another exchange. Rather than paying toll charges to contact the ISP's server, these customers use Extended Area Service (EAS) to reach the ISP.[17] EAS service, which effectively expands the end user's local calling scope, is provided at an averaged local monthly rate, thus making the call to an ISP much more affordable for rural customers.

On July 6, 1998, IURC staff was notified by Swayzee Telephone Co., Inc. that the ILEC planned to block calls which originated in its exchange, traveled across EAS lines, and terminated with an ISP located in a community in a neighboring exchange connected by EAS.[18] Swayzee argued that the long holding times of calls to the ISP caused congestion across the EAS trunks, making it difficult to place a voice call at certain times of day. In order to ameliorate this congestion, Swayzee notified its customers and IURC staff that it planned to block calls originated in its exchange that were destined for the ISP. Swayzee argued that Internet traffic is interstate in nature because such traffic does not terminate with the ISP connected by EAS but at some distant web site. Given that the Indiana Administrative Code[19] and prior IURC Orders[20] mandate that EAS is

[17] EAS is a telephone service that allows persons in a given exchange to place and receive calls from a different exchange without an additional toll charge. Most existing EAS areas have evolved over the years based on a community of interest. The costs of providing EAS have been included in averaged local rates so there is generally no additional monthly cost to customers of the exchange for their toll-free calling areas.

[18] Letter from Jack H. Whitlow, Operations Manager, Swayzee Telephone Co. Inc., to Mike Leppert, IURC Director of Consumer Affairs.

[19] 170 IAC 7-4.

[20] For example, *In the Matter of the Investigation on the Commission's Own Motion into Any and All Matters Relating to Extended Area Service, as Defined by 170 IAC 7-4 Et. Seq.,* Cause No. 40097, June 21, 1996.

only to be used to provide customers in a given exchange the ability to place and/or receive calls from another designated exchange, Swayzee argued that Internet traffic is not subject to EAS provisions because it does not in fact terminate in the other designated exchange.

In response to customer complaints about the intended blocking, IURC staff notified Swayzee that such action would constitute a violation of the ILEC's intrastate tariff. Swayzee's tariff provides customers with unlimited calling for a flat rate within a local calling scope, and the EAS arrangement expanded Swayzee's local calling area to include the community in which the ISP was located. For purposes of this EAS dispute, IURC staff advised Swayzee that calls to an ISP located within an end user's local calling area were local calls, since the end user could reach the ISP using his or her local access line and by dialing a seven-digit number. As such, IURC staff notified Swayzee that blocking EAS calls to the ISP, which IURC staff considered to be local calls, would constitute a violation of the carrier's tariff. Swayzee subsequently agreed to allow the calls to terminate with the ISP pending a determination by the FCC on the jurisdictional nature of Internet traffic.

Given the FCC's determination that traffic bound for an ISP is predominantly interstate traffic, small, rural telephone companies such as Swayzee will have an incentive to block calls to an ISP connected to their service area by an EAS arrangement. Why should a rural telephone company deploy additional EAS trunks to avoid congestion resulting from Internet usage when it can simply block such calls on the grounds that this traffic is interstate in nature, and therefore not subject to EAS? In the immediate future, this could require end users who live in rural areas to pay toll charges or similar charges in order to access the Internet, which most likely would lead to a decrease in Internet usage among rural customers. We remind the FCC that Enhanced Service Providers, including ISPs, were exempted from paying interstate access charges in the hope that allowing end users to place local, rather than toll, calls to ISPs would encourage use of the Internet.[21]

In order to avoid a decrease in Internet usage among rural customers, the FCC should develop some means by which a rural telephone company can recover its cost of providing Internet access on an interstate basis, for example, by allowing a carrier such as Swayzee Telephone Company to assign the cost of deploying additional EAS trunks to interstate access charges. Since many rural telephone companies are average schedule carriers that concur in NECA's access tariff, a comprehensive investigation into access charge revisions to reflect Internet usage most likely would be necessary.

The IURC must reiterate that it disagrees with the FCC's finding that the costs and revenues associated with Internet traffic are to be assigned to the intrastate jurisdiction for separations purposes.[22] By dividing jurisdictional authority and cost recovery responsibility, the FCC has clearly violated fundamental separations principles. The FCC's unilateral assignment of Internet costs and revenues to the intrastate jurisdiction

[21] NPRM, footnote 8.
[22] NPRM, paragraph 36.

also constitutes a de facto preemption of the statutory authority provided the Separations Joint Board. As such, the IURC requests feedback on the position that a state commission may require a LEC under its jurisdiction to either stop providing local access lines to end users for Internet access, or block calls placed to ISPs across local access or EAS lines, since it is not the responsibility of the state commission to recover the costs associated with an interstate service through intrastate BLS or EAS rates, and they may not legally be able to do so.

4. The FCC Should Allow Inter-Carrier Compensation to be Determined through Voluntary and Arbitrated Interconnection Agreements

In the NPRM, the FCC seeks comment on two proposals for prospectively determining inter-carrier compensation for Internet traffic: 1) allow carriers to determine compensation through private negotiations, or if these negotiations fail, through arbitrations conducted by state commissions under sections 251 and 252 of TA-96; or 2) adopt a set of federal rules to govern the rates, terms and conditions for such inter-carrier compensation, with any resulting disputes settled by a federal arbitration process.

The IURC supports the FCC's tentative conclusion that inter-carrier compensation for all Internet traffic that travels the public switched network should be determined through negotiated or arbitrated interconnection agreements.[23] The IURC believes that the current process for determining the rates, terms and conditions for interconnection and unbundled network elements under sections 251 and 252 is sufficient and can be successfully applied to inter-carrier compensation for Internet traffic on a prospective basis. The IURC does not support adoption of a federal set of guidelines to govern inter-carrier compensation for the interstate portion of ISP-bound traffic.[24] Federal rules would create yet another form of regulation and might have the unintended effect of making negotiations more burdensome, thus delaying the growth of competition for telecommunications services.

Indeed, the IURC believes that developing specific federal rules to govern the rates, terms and conditions for inter-carrier compensation for Internet traffic would be out-of-line with the market-based provisions in TA-96 and the FCC's earlier local competition orders. If a carrier either has agreed to pay reciprocal compensation for traffic bound for an ISP, or agrees to do so in a future agreement, then the carrier should have to fulfill the terms of the agreement. In Indiana, the IURC found that the decision to pay reciprocal compensation has been voluntarily arrived at through private negotiation, not through a determination by the IURC that Internet traffic is local and therefore subject to such compensation. Regulatory bodies should not be responsible for preventing any

[23] NPRM, paragraph 30: "We tentatively conclude that, as a matter of federal policy, the inter-carrier compensation for this interstate telecommunications traffic should be governed prospectively by interconnection agreements negotiated and arbitrated under sections 251 and 252 of the Act."

[24] Of course, this is based on the assumption that it is possible to divide Internet traffic into interstate traffic and intrastate traffic, which is unknown to the IURC at this time.

carrier from feeling the effects of a voluntarily made business decision.[25] We remind the FCC that section 252(e) of the Act only allows state commissions to deny a voluntarily negotiated interconnection agreement if it is discriminatory or not in the public interest; payment of reciprocal compensation for ISP-bound traffic, and any financial impact it may have on a carrier, does not meet this standard. The IURC encourages the FCC to continue to allow local exchange carriers to determine reciprocal compensation provisions for ISP-bound traffic.

In short, the IURC believes that state commissions have successfully reviewed and enforced both negotiated and arbitrated interconnection agreements under TA-96, including provisions regarding compensation for Internet traffic. As such, the FCC should continue to allow all inter-carrier compensation, including compensation for Internet traffic, to be determined as prescribed by sections 251 and 252 of TA-96 and avoid the creation of a new, federal layer of bureaucracy.

5. If the FCC Seeks a Single Cost Recovery Mechanism for ISP-Bound Traffic, it Should Encourage States to Require Carriers to Adopt Bill and Keep Arrangements

If the FCC believes that a uniform cost recovery mechanism for ISP-bound traffic is necessary, then it should *strongly encourage* the states to require carriers to recover their costs for the transport and termination of all traffic through bill and keep arrangements.[26] We remind the FCC that it presented states three options for setting rates for the transport and termination of local traffic in its first local competition order.[27] States could: 1) develop rates based on a TELRIC cost study; 2) use the default cost proxies developed by the FCC; or 3) order carriers to adopt bill and keep arrangements, so long as the traffic between carriers is "roughly balanced".[28] However, the balanced traffic standard will be difficult to achieve in many instances and would require CLECs to install expensive billing systems. It is the IURC's recommendation, therefore, that the "roughly balanced" requirement be eliminated in order for bill and keep to be a practical alternative to reciprocal compensation.

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[25] For example, the IURC recently required Indiana Bell Telephone Company, Inc. d/b/a Ameritech Indiana to pay Time Warner Communications of Indiana, L.P. reciprocal compensation for the termination of Internet traffic as required by the voluntarily negotiated interconnection agreement between the carriers (Cause No. 40572 INT 02). The IURC made this decision based on the finding that Ameritech Indiana had voluntarily agreed to pay Time Warner for such traffic, not on a decision regarding the jurisdictional nature of the traffic. See *In the Matter of the Complaint of Time Warner Communications of Indiana, L.P. against Indiana Bell Telephone Company, Incorporated D/B/A Ameritech Indiana, for Violation of the Terms of the Interconnection Agreement*, Cause No. 41097, February 3, 1999.

[26] Bill and keep arrangements are arrangements in which "neither of two interconnecting networks charges the other network for terminating traffic that originated on the other network." *In re: Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket 96-96, August 8, 1996, paragraph 1096.

[27] *In re: Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket 96-96, released August 8, 1996.

[28] Id, paragraph 1112.

6. The FCC Should Encourage States to Apply a Gradual Phase-Out of Existing Reciprocal Compensation Provisions

Section (252)(i) of TA-96 allows a carrier to adopt an interconnection agreement between two other carriers, provided such agreement has been approved by the applicable state commission. Many interconnection agreements also have "Most Favored Nation" (MFN) provisions, which among other things allow a carrier that is a party to an agreement to continue existing contract provisions for another term after the original contract expires. In the NPRM, the FCC asks for comment on how section 252(i) and MFN clauses in existing agreements will affect a carrier's ability to renegotiate the rates, terms and conditions of reciprocal compensation for Internet traffic in the wake of the FCC's ruling that such traffic is interstate in nature.[29]

The IURC believes that without some sort of regulatory intervention, both section 252(i) and MFN clauses will allow CLECs to adopt existing contract provisions that require ILECs to pay reciprocal compensation for ISP-bound traffic on a prospective basis, regardless of the FCC's recent order that such traffic is not local and therefore not subject to reciprocal compensation. For example, Indiana recently received a request from FBN Indiana, Inc. to adopt a voluntary negotiated interconnection agreement between Ameritech Indiana and US Xchange of Indiana, L.L.C. pursuant to section 252(i).[30] Ameritech Indiana seeks to add a footnote to the agreement adopted by FBN Indiana, Inc., which states that the original agreement is not to be interpreted to include an agreement by Ameritech Indiana to pay reciprocal compensation for Internet traffic.

As stated in the previous section, the IURC believes that carriers should be responsible for fulfilling the provisions contained in existing interconnection agreements. The IURC perceives that the FCC agrees with our assessment.[31] However, in an effort to limit litigation of the reciprocal compensation provisions in existing interconnection agreements, as described above, the IURC proposes that the FCC encourage states to institute a gradual phase-out of the payment of such charges. The phase-out could take place over a multi-year period (e.g., three to five years). For example, in year 1, ILECs would be required to pay 100 percent of the reciprocal compensation fees for ISP-bound traffic terminated by a CLEC; in year 2, the ILEC would pay for 66 percent of the total traffic; in year 3, the ILEC would pay for 33 percent of the traffic; and by year 4, the ILEC would no longer pay reciprocal compensation for traffic terminated by the CLEC. The IURC believes this compromise solution would provide incumbent local exchange carriers an opportunity to renegotiate their existing interconnection agreements while allowing competitive carriers to earn the compensation to which they are legally entitled and to amend their business plans as needed.

[29] NPRM, paragraph 35.
[30] Cause No. 41268 INT 09, filed December 9, 1998.
[31] NPRM, paragraph 24.

7. Conclusion

The FCC should accept responsibility for asserting its jurisdiction over Internet traffic. As such, the IURC asks the FCC to develop and implement a means to recover the costs associated with such traffic on an interstate basis. The IURC also asks for guidance on how it should regulate the use of intrastate services, notably business and residential local access lines purchased out of an intrastate tariff, when such services are used to carry interstate traffic. In addition, the IURC asks the FCC to consider the impacts that this decision may have on Internet access for rural customers, and develop some means by which a rural LEC can assign the costs of upgrading its EAS facilities to the interstate jurisdiction.

Finally, the IURC believes that negotiations and arbitrations provide carriers a sufficient means to determine compensation for Internet traffic, making an additional federal set of guidelines unnecessary. If, however, the FCC believes that a national standard is necessary, the IURC recommends that the FCC encourage states to implement a gradual phase-out of the existing reciprocal compensation provisions in current interconnection agreements. Once this phase-out is complete, the IURC proposes that the FCC ask states to require carriers to adopt bill and keep arrangements for the transport and termination of both local and Internet traffic. The IURC believes that these recommendations strike a balance between ILEC and CLEC interests, thus limiting the amount of litigation that will ensue in the wake of the FCC's new jurisdictional treatment of Internet traffic.

INDIANA UTILITY REGULATORY COMMISSION

Submission of Comments to the Federal Communications Commission
April 12, 1999

In re: Declaratory Ruling and Notice of Proposed Rulemaking in CC Docket No. 96-98 and CC Docket 99-68.

The Indiana Utility Regulatory Commission submits the foregoing comments to the Federal Communications Commission (FCC) in response to the FCC's Notice of Proposed Rulemaking, released February 26, 1999, under the previously cited dockets.

The Executive Secretary of the Indiana Utility Regulatory Commission is hereby directed to submit these comments to the FCC, in accordance with that Agency's procedural requirements.

Chairman William D. McCarty

G. Richard Klein, Commissioner

David E. Ziegner, Commissioner

Camie Swanson-Hull, Commissioner

Judith G. Ripley, Commissioner

ATTEST

Joseph Sutherland
Executive Secretary to the Commission